

# SANDLER REIFF

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December 8, 2017

Mr. Jeff S. Jordan  
Assistant General Counsel  
Office of Complaints Examination  
and Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 7289

Dear Mr. Jordan:

The undersigned serves as counsel to Take Back the Tenth and Abbey M. Ruby, in her official capacity as Treasurer (the "Committee"). This letter responds on behalf of the Committee to the Commission's notification that it received a complaint (the "Complaint") alleging that the Committee violated the Federal Election Campaign Act (the "Act") and Federal Election Commission (the "Commission") regulations.

As described below, based upon the facts of the Complaint and other information available, there is no reason to believe that the Committee has violated the Act or any of the Commission's regulations. Furthermore, even if the Commission were to find reason to believe that a violation has occurred, the Commission should dismiss the Complaint under the prosecutorial discretion afforded to it by Heckler v. Chaney, because to pursue enforcement over such a small matter would not be an efficient use of the agency's time and resources.<sup>1</sup>

Take Back the Tenth is an Independent Expenditure-Only PAC, which registered with the Federal Election Commission on March 14, 2017. Through June 30, 2017, the Committee raised just under \$14,000 and spent approximately \$6,500 on Independent Expenditures.

This Complaint was filed on October 23, 2017. The Complaint focuses on advertisements displayed by a mobile billboard truck in Washington, D.C. on September 29, 2017. The Complaint alleges that the advertisements did not include the disclaimers required by 52 U.S.C. § 30120 and 11 C.F.R. § 110.11.<sup>2</sup> The Complaint further alleges that the Committee blatantly disregarded the law and "attempted purposefully to obfuscate its identity."<sup>3</sup>

<sup>1</sup> Heckler v. Chaney, 470 U.S. 821 (1985).

<sup>2</sup> Complaint at II.

<sup>3</sup> Id. at III.

Since its formation in March of 2017 through the filing of this letter, the Committee has utilized mobile billboard trucks on three separate occasions. The truck, operated by The Box Advertising ("the Operator"), contains an LED display that can play video and sound and also show still images. The truck has three LED displays, one on each side and one in the rear.

On June 22, 2017 and July 4, 2017, the Committee provided two 4:37 minute video files to the Operator. The video files then played on a loop for the duration of the advertising period. The video displayed on both side panels contained a clear and conspicuous disclaimer at minute mark 2:12, running for a consecutive period of 20 seconds, which stated "PAID FOR BY TAKE BACK THE TENTH, DUMPCOMSTOCK.COM, NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE."<sup>4</sup> The cost per day for these advertisements was \$900, for a total of \$1,800.00.

On September 29, 2017, a volunteer for the Committee provided two images to the Operator to be used on the mobile billboard truck. The still images were then automated into a video by the Operator and displayed in Washington, D.C. The total cost for this advertisement was \$600.00.<sup>5</sup> The Committee acknowledges that the required disclaimers were inadvertently omitted from images provided to the Operator for the September 29, 2017 advertisement.

The failure to include the required disclaimer was a mistake made by a volunteer of the Committee. It was not done purposefully nor in an attempt to obfuscate the Committee's identity, as alleged in the Complaint.<sup>6</sup> It has always been the PAC's policy that the following be included on a rotating basis when utilizing the mobile video billboard truck:

PAID FOR BY TAKE BACK THE TENTH, DUMPCOMSTOCK.COM, NOT  
AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE.

As is evidenced by the Committee's proper use of disclaimers on its June 22, 2017 and July 4, 2017 advertisements, the omission was an oversight and not the normal course of conduct. The Complainant's claim that the unintentional omission of the disclaimer was a purposeful attempt to obfuscate the Committee's identity is without basis. As seen in the images provided by the Complainant, the advertisement contained an image with the phrase "Dump Comstock".<sup>7</sup> Dump Comstock is the website URL that the Committee uses, as is evidenced by its usual disclaimer on the website: "PAID FOR BY TAKE BACK THE TENTH, DUMPCOMSTOCK.COM, NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE." The Committee was certainly not attempting to obfuscate its identity when it branded the mobile billboard truck with its web address. The omission of the disclaimer on the

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<sup>4</sup> See Exhibit A (Images of the mobile billboard truck from June 22, 2017 and July 4, 2017).

<sup>5</sup> See Invoice at Exhibit B.

<sup>6</sup> Complaint at III.

<sup>7</sup> Complaint at Exhibits B and C.

September 29, 2017 advertisement was an oversight and the Committee is committed to ensuring that it will not occur again. The Committee has addressed the omission with the particular volunteer and has also provided a verbal and written reminder to the broader group of volunteers of the Committee's policy regarding inclusion of the disclaimer on public communications paid for by the Committee.<sup>8</sup>

Due to the *de minimis* nature of the error and the Committee's remedial actions, the Committee respectfully requests that the Commission exercise its prosecutorial discretion and dismiss this Complaint. The Commission has routinely dismissed similar complaints related to the omission of, or an incorrect, disclaimer when it was inadvertent and the Committee took steps to remedy the error.<sup>9</sup>

If you have any questions regarding this Response, my daytime number is (202) 479-1111. My email address is [reiff@sandlerreiff.com](mailto:reiff@sandlerreiff.com).

Sincerely,



Neil P. Reiff  
Counsel to Take Back the Tenth

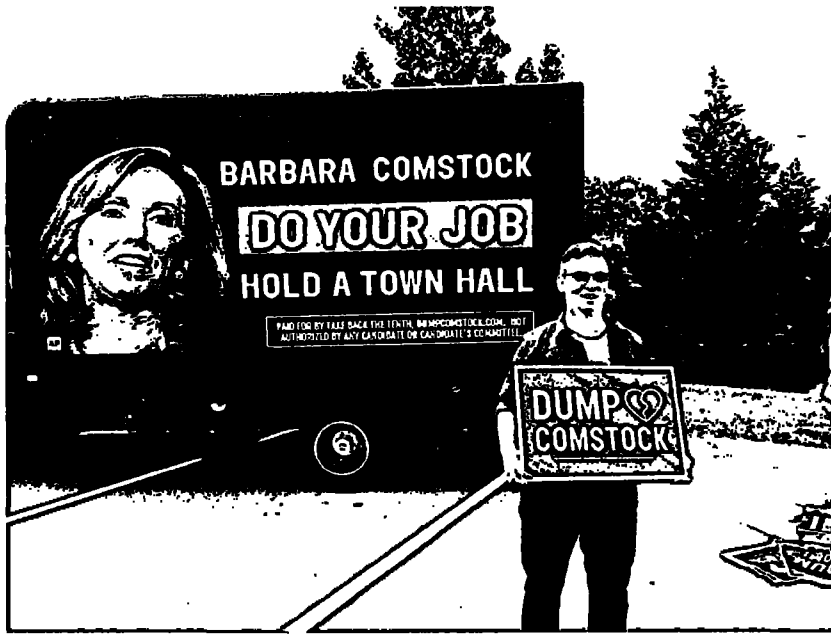
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<sup>8</sup> See Written Policy at Exhibit C.

<sup>9</sup> See, e.g., MUR 6316 (Pridemore for Congress) (The Commission voted 6-0 to dismiss the Complaint where Committee acknowledged it had included defective disclaimers or omitted disclaimers from public communications); MUR 6278 (Committee to Elect Joyce Segers for Congress) (The Commission voted 6-0 to dismiss the Complaint where Committee acknowledged that disclaimers had been inadvertently omitted from certain campaign materials); MUR 6118 (Bob Roggio for Congress) (The Commission voted 4-0 to dismiss the Complaint where Committee acknowledged inadvertent omission of the required disclaimer for a billboard for a short period of time); MUR 6329 (Michael Grimm for Congress) (The Commission voted 6-0 to dismiss Complaint where Committee acknowledged required disclaimers were omitted from lawn signs). See also Statement of Reasons of Chair Bauerly and Commissioner Walther, MUR 6698 (United Ballot PAC) (Commissioners acknowledged dismissal of enforcement actions where "a disclaimer was omitted due to *inadvertent error* followed by prompt remedial action").

**EXHIBIT A**

**June 22, 2017**



July 4, 2017



1-800-944-1000

## EXHIBIT B



**The Box Advertising**

INVOICE	DUE DATE	BALANCE DUE
1294	09/26/2017	\$600.00

[View invoice](#)

Dear Take Back the Tenth,

Here's your invoice! We appreciate your prompt payment.

Thanks for your business!  
The Box Advertising



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## **EXHIBIT C**

**Official Policy:** As a reminder to all volunteers, it is the policy of Take Back the Tenth (the "Committee") that all public communications paid for by the Committee must display the following disclaimer:

**"PAID FOR BY TAKE BACK THE TENTH, DUMPCOMSTOCK.COM, NOT  
AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE."**

The disclaimer must be clear and conspicuous, and within a printed box set apart from the contents of the communication. The print must be of a sufficient size and with a reasonable degree of color contrast from the background to be clearly readable by a recipient of the communication.

The following exceptions apply:

1. If the disclaimer cannot be conveniently printed (for example, pens, bumper stickers, pins and similar small items); and
2. If display of the disclaimer is not practicable (for example, wearing apparel).

If you have any questions regarding the above, please discuss with Abbey M. Ruby, Treasurer of the Committee.

**Best Practice:** If feasible, please provide a copy or proof of any public communication paid for by the Committee to Abbey M. Ruby, Treasurer of the Committee, for approval at least 72 hours in advance of printing or publication.